

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CR-23-00272-PRW
	)	
THOMAS LAMAR BROWN,	)	
	)	
Defendant.	)	

**ORDER**

Thomas Lamar Brown is a violent felon with two prior convictions for Infliction of a Corporal Injury on a Spouse or Cohabitant.<sup>1</sup> On April 15, 2023, Oklahoma Highway Patrol stopped Mr. Brown, searched his vehicle, and found three firearms in the vehicle. A federal grand jury subsequently returned an indictment charging Mr. Brown with one count of violating 18 U.S.C. § 922(g)(1). Mr. Brown now moves for dismissal of that charge, arguing that § 922(g)(1) violates the Second Amendment.

In 2009, the Tenth Circuit in *United States v. McCane* rejected a post-*Heller* challenge to the constitutionality of § 922(g)(1)<sup>2</sup> as applied to a violent felon like McCane, relying on the Supreme Court’s statement in *District of Columbia v. Heller* that ““nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession

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<sup>1</sup> *People v. Brown*, No. RIF107555 (Riverside Sup. Ct., Nov. 29, 2002); *People v. Brown*, No. 12HF2758 (Newport Beach Sup. Ct., Sept. 22, 2012).

<sup>2</sup> *United States v. McCane*, 573 F.3d 1037, 1047 (10th Cir. 2009).

of firearms by felons[.]”<sup>3</sup> Mr. Brown’s motion does not explicitly address *McCane*, but he impliedly argues that the Supreme Court’s decision in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*<sup>4</sup> invalidates *McCane*. However, a circuit decision remains good law unless “the Supreme Court issues an intervening decision that is contrary to or invalidates . . . previous analysis.”<sup>5</sup> Given *Bruen*’s unequivocally favorable treatment of *Heller*, it cannot be read as contradicting or invalidating *McCane*’s reliance on *Heller*. For that reason, *McCane* remains binding precedent that this district court is duty bound to follow in a case like this, which, like *McCane*, involves a defendant with prior felony convictions for violent crimes.

The Motion to Dismiss the Indictment (Dkt. 17) is **DENIED**.

**IT IS SO ORDERED** this 10th day of October 2023.



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PATRICK R. WYRICK  
UNITED STATES DISTRICT JUDGE

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<sup>3</sup> *Id.* (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008)).

<sup>4</sup> 142 S. Ct. 2111 (2022).

<sup>5</sup> *United States v. Brooks*, 751 F.3d 1204, 1209 (10th Cir. 2014) (internal quotation marks omitted).